HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.A.No. 490 of 1999
Reserved on: 13.8.2007
Decided on: 14.9.2007

State of Himachal Pradesh .....Appellant.

Versus

Mohan Lal and another .....Respondents.

Coram:
The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? No.

For the appellant: Mr.Ashutosh Burathoki, Additional Advocate General.

For the respondents: Mr.Vinay Thakur, Advocate.

V.K. Ahuja, J:

This is an appeal filed by the appellant/State of H.P. against the order of acquittal passed by the learned Special Judge (Forest), Shimla on 23.6.1999 in corruption case No.4-S/7 of 1994. By the said order, the learned Special Judge acquitted the respondents for the offences punishable under Sections 120-B, 420, 218 IPC, under Rules 11/20, 18/20 of the H.P. Forest Produce Transit (Land Routees) Rules 1978 and Section 109 read with Section 5(2) of the Prevention of Corruption Act.

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[1]. Whether reporters of Local papers may be allowed to see the judgment? Yes.

Briefly stated the facts of the case are that during the investigation of the case, FIR No.17/84, dated 28.8.1984, was registered under Sections 379, 420, 468, 471 and 120-B of IPC, Sections 41, 42 of India Forest Act and Section 5(2) of Prevention of Corruption Act. It came to light during investigation that permit No.233/81-82, dated 22.12.1981, was issued by DFO, Shimla, which was valid upto 30.12.1981 and it was issued for 455 number of scants of Deodar, round ballies, Kail and Rai equivalent to 27.37 cubic meters. However, it transpired that 73 number of scants of timber of different species were exported in excess through the said permit. It was also revealed during investigation of the case that while 455 scants were to be transported from Summer Hill Railway Station to outside Himachal Pradesh, 528 scants of different species were sent to different places from Summer Hill Railway Station to outside Shimla on the authority of these permits after the expiry of the export permits. It was also found that S/Shri Balak Ram, Goverdhan Singh and Kishori Lal had entered into agreement with Mohan Lal, authorized Contractor, for the sale of trees standing on their private land and after obtaining the revenue records and affidavits and agreements of these persons, they purchased the trees on different terms and conditions and they had moved application to the DFO for according permission to sell the trees and for demarcation and marking of the trees. The demarcation was ordered by the DFO and 60 trees of different species were marked in the land of these persons and felling orders were issued and Mohan Lal converted timber of 60 trees and prepared the list of converted timber and accordingly export permit was also issued.

The matter was investigated in detail and the charge, as detailed above, was framed against both the respondents. The prosecution examined as many

as 37 witnesses to substantiate their case. Statements of the accused under Section 313 Cr.P.C. were recorded and they denied the allegations as against them. No defence evidence was led. After hearing the parties, the learned Special Judge acquitted both the respondents, while three of the accused persons, who were originally challaned, died before framing of the charge.

I have heard the learned Additional Advocate General for the appellant/State and learned counsel for the respondents and have gone through the record of the case.

It was contended by the learned Additional Advocate General for the State that there was ample evidence on record to prove that the timber was exported from Summer Hill Railway Station to outside Himachal Pradesh after the expiry of the date of the export permit i.e. after 30.12.1981. It was submitted that there was sufficient evidence to show that the timber was exported after the expiry of date of the permit, but the learned Trial Court did not rely upon the evidence and wrongly presumed that the timber was booked prior to that date which findings are not correct and are liable to be reversed. In regard to the export of excess timber i.e. 73 scants were exported in excess for which there was sufficient evidence on record and as such the findings of the learned Trial Court, which are based upon surmises and conjectures, are liable to be reversed.

On the other hand, the learned counsel for the respondents has supported the impugned judgment for the reasons given there in supplementing it by the submission that the learned Trial Court had correctly concluded that the timber was produced before the Railway Authorities before the expiry date of the permit and as such the timber was exported before the expiry of date of the permit. The charge of criminal conspiracy was also not proved since there was

not sufficient evidence on record to prove the charge and since the timber was booked within the time prescribed in the export permit and as such the guilt of the respondents was not proved according to law and the findings of the learned Trial Court cannot be said to be perverse in any manner calling for an interference by this Court.

Two main questions arise in this appeal. Firstly, as to whether the timber was exported by the accused persons beyond the expiry date of the export permit i.e. beyond 30.12.1981. Secondly, as to whether 73 scants were exported in excess by the respondents.

Coming to the first question, it is clear from the allegations made by the prosecution that the export permit was issued in favour of lessee i.e. respondent No.1. The permit dated 22.12.1981 issued by the DFO, Shimla was valid upto 30.12.1981. It was valid for 455 number of scants and according to the prosecution story, 73 number of scants of different species were exported in excess through the said permit. These railway receipts were allegedly filled by Ramesh Kumar-accused vide forwarding notes Ext.PW-2/C-1 and Ext.PW-2/C-9. Out of these railway receipts, only railway receipt Ext.PW-2/C-9 was issued within the valid period and rest of the railway receipts have been issued by R.M. Dua (now deceased), the Assistant Station Master, after the expiry of the export permit i.e. 31.12.1981, whereas the export permit issued by the DFO was valid upto 30.12.1981. Out of 528 scants, 331 scants were exported on 31.12.1981 after the expiry of the export permit. The prosecution story is that this was in furtherance of the criminal conspiracy hatched by Mohan Lal-accused, who had purchased these trees and these were exported by Ramesh Kumar-accused in conspiracy with the Assistant Station Master R.M. Dua since dead. The learned

Trial Court had come to a conclusion that the charge of criminal conspiracy does not stand proved in view of the evidence which part of these findings was not specifically challenged during the course of the arguments. PW-28 S.U. Siddiqui, Chief Commercial Inspector, has stated that he is conversant with the rules regarding booking and transportation of timber through Railways, which are governed by Indian Railway Commercial Manual 1989. He has stated that the forwarding note is filled and thereafter railway receipts are issued. The timber is to be booked by the permit holder or his authorized agent and validity of the permit is seen not only at the time of loading of the timber and issuance of the railway receipts but at the time of delivery also. PW-9 Shri Rajan Lal, Goods Clerk, had handed over the original railway receipts Ext.PW-9/B.I and Ext.PW-2/C-3 and this railway receipt dated 31.12.1981 was of 94 scants which was received from Summer Hill Railway Station which has been unloaded and delivery was sent by Mohan Lal in the name of 'self'. However, the entries had not been made by him. According to PW-22 Kailash Chand, vide railway receipt Ext.PW-2/C-5 and vide R.R. Ext.PW-22/B, 35 scants from Summer Hill to Moga were booked by Mohan Lal in the name of 'self'. The prosecution had also examined PW-11 Mohinder Singh, Assistant State Questioned Documents, Shimla to prove that all the 5 R.Rs. were issued by R.M.Dua and also forwarding notes of these railway receipts. He proved the writing and signature of R.M. Dua but had failed to prove that these were in the hand writing of Ramesh Kumar, the agent. The endorsement was alleged to have been made by Mohan Lal but it has not been proved from his testimony. A perusal of the statement of PW-30 Kanthi Ram shows that he has stated that during investigation, it was not revealed that Mohan Lal-accused was accompanying the timber when it was

unloaded at Summer Hill Railway Station. He also stated that it was not revealed during the investigation that any excess timber was sold by Mohan Lal but he has explained that this permit was used by other persons. Once there is specific opinion of the Investigating Officer that this permit was used by some other persons, no responsibility can be fastened upon Mohan Lal only on the ground that the permit was issued in his name. No evidence has been led to show as to who has misused the permit in exporting timber through Railways from Himachal Pradesh. Nothing was established on record from the evidence that the charge of conspiracy was proved that the accused persons in connivance with the Railway official R.M. Dua and others exported excess timber. The learned Trial Court had referred to the other evidence also under point No.1 and I do not need to reiterate the said evidence or refer to the same again since nothing has come up material so as to hold that the evidence was not properly appreciated by the learned Trial Court under this point. Therefore, point No.1 was not proved.

Coming to the second point in regard to expiry of permit of excess timber numbering 73, Rules 11 and 18 of the Transit Rules are relevant which can be reproduced below:

> "Prohibition on transport of forest produce (1). No person shall transport or cause to be transported any forest produce by land routes, without obtaining pass (Annexure 'A') from the concerned Divisional Forest Officer or any other officer so authorized……."
> and Rule 18 of the Transit Rules deals with the power of forest booking by the rail.
> "18. Bar on booking of forest produce by rail:-
> No person shall offer any forest produce for export by rail on any railway station within Himachal Pradesh unless it is covered by a pass issued under these rules. Nor will the Railway authorities accept any forest produce for transport by rail unless accompanied by a valid pass."

A perusal of these rules shows that no person shall be allowed any produce for export by rail within the territory of Himachal Pradesh unless pass has been issued under these rules. A perusal of the statement of PW-3 M.A. Siddiqui and the report made by him Ext.PW-3/A shows that some irregularities were detected. It had come up in his statement that out of 5 R.Rs., 4 were issued after the expiry of the export permit by the then Assistant Station Master, R.M. Dua (now deceased). PW-3 M.A. Siddique has corroborated this version of PW-1 K.C. Nandwani. He has also stated that sometimes the timber used to remain at Railway Station Summer Hill. The observations made by the learned Trial Court, while referring to the testimony of this witness, may be reproduced below, which is relevant:

> "PW.M.A. Siddiqui has stated that forwarding note is filled in disclosing the particulars to be booked including the name of the sender, name of the consignee, station to, station from, quantity, quality etc., and after the forwarding note is accepted the same is entered in the priority register. In cross examination he has stated that some times timber used to be remain at Railway Station Summer Hill due to the non-availability of the wagon and wagon used to be issued as per the propriety register and as per the availability. He has also stated in the cross-examination that the process of booking starts with the filling of the forwarding note but he has clarified in his statement that as per the clarification given by the Chief Conservator of Forest Shimla, loading was required to be done during the validity period of the permit. PW-28 Shri S.U. Siddiqui has stated that he is conversant with the rules of booking, and transportation of timber through railways is governed by the Indian Railway Commercial Manual 1989 Volume-II that on receipt of the forwarding note when it is accepted, entry is made in the priority register and demand for supply of the wagon is made to the DRM office. He has also testified that regarding the timber and other restricted items, Central or the Sate Government informs the Railway Authority and the instructions and notifications issued by the H.P. Government including the forest department are sent to the railway Board which further convey to the Regional Authority who will further convey to the General Manager, Northern Railways who further conveys the same to the concerned station masters

> and he has further stated that RRs are prepared after the articles are loaded in the wagon and these are prepared in four copies."

PW-3 M.A. Siddiqui has further stated that the process of booking started when the forwarding note is filled in, the same is entered in the priority register and loading is required to be done during the validity period. It is also in evidence that until and unless the Railway Authorities are informed by the Forest Officials that the forest produce was restricted as per railway rules and then they are only bound in regard to instructions issued by the State or the Central Government by notification. The prosecution had not led any evidence to show that the clarification sought from the Chief Conservator of Forests, Shimla, as referred by the learned Trial Court, was circulated to the concerned Station Master and, therefore, the permit was to be sent at the time of booking of the goods or when the forwarding note was entered in the priority register which is maintained along the booking register. The said priority register can be said to be very material document to consider as to whether the booking was done before the expiry of the export permit but the said priority register was never produced during the trial of the case. This is a document in regard to the booking of the goods and the goods are loaded on the wagon on the availability of the wagon and in my opinion the relevant date can be said to be when the goods are produced at the Railway Station and the entries are made in the priority register since the responsibility of the booking agent of the Contractor can be said to be over once he produces the goods within the period as prescribed by the permit. Therefore, the non-production of the priority register can be said to be fatal to the prosecution story. The forwarding note is accepted

and the same is entered in the priority register when the RRs were issued and not when the goods are actually loaded in the wagons.

According to the prosecution evidence, vide RR Ext.PW-2/C-1, 90 scants were booked from Summer Hill Railway Station to Jagadhari and forwarding note was allegedly filled in by Ramesh Kumar-accused and 190 scants vide RR Ext.PW-2/C-9 were sent to Subzi Mandi, New Delhi and forwarding note was also allegedly filled by Ramesh Kumar. The prosecution has failed to prove as to who filled these RRs and booked the timber or the forwarding notes. The forwarding note can be filled by permit holder or his authorized agent. The prosecution has only proved that 90 scants vide RR Ext.PW-2/C-1 and 190 scants vide Ext.PW-2/C-9 were sent to outside Himachal Pradesh which was less than the quantity of 455 scants which could have been exported vide these permits. The prosecution has miserably failed to show that 528 scants in all were exported to outside Himachal Pradesh and that all these forwarding notes were filled in by Ramesh Kumar-accused.

The learned Trial Court has discussed the evidence in detail on both these points and I do not find any infirmity in the findings recorded by the learned Trial Court while deciding the points No.1 and 2 as against the prosecution and in favour of the accused persons.

From the above discussion, it is clear that both these points, which are main points which arose for consideration before the learned Trial Court, were duly considered by the learned Trial Court and the reference was made to the evidence in detail. No evidence has been pointed out by the learned Additional Advocate General to conclude that there was misreading of evidence or relevant evidence was ignored by the learned Trial Court and as such I do not find any

reasons to disagree with the findings recorded by the learned Trial Court. Thus, as such the prosecution had miserably failed to prove their case beyond any reasonable doubt and findings recorded by the learned Trial Court cannot be termed as perverse calling for an interference by this Court and as such are liable to be upheld.

In view of the above discussion, the appeal filed by the appellant is liable to be dismissed which is dismissed accordingly. Bail bonds shall stand discharged.

(V.K. Ahuja),
Judge.

September 14, 2007
(TILAK)